U.S. Department of Labor

Office of Administrative Law Judges
Heritage Plaza Bldg. - Suite 530
111 Veterans Memorial Blvd
Metairie, LA 70005

(504) 589-6201
(504) 589-6268 (FAX)

Issue date: 18Oct2002

CASE NUMBER: 2002-AIR-21

IN THE MATTER OF

GREGORY A. FORD,
Complainant

v.

NORTHWEST AIRLINES, INC.,
Respondent

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS CASE IN PART AND ORDER OF REMAND TO OSHA

I. PROCEDURAL HISTORY

On November 17, 1999, Complainant initiated a Minnesota State law whistleblower claim alleging that he was terminated for refusing to fly in violations of federal safety regulations. Complainant also alleged that as a result of Respondent's action he was unable to obtain "reputable employment." The State law claim was referred to arbitration, and on March 15, 2002, the arbitrator ruled that Complainant's suit was preempted by Federal law. On March 28, 2002, Complainant, filed complaints or initiated investigations with multiple offices of the Occupational Safety & Health Administration (OSHA) under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (2002), raising the same allegations that formed his State law claim.[1] The Eau Claire, Wisconsin office of OSHA dismissed the complaint as untimely on May 31, 2002. Claimant filed an objection to OSHA's determination on July 15, 2002, and the case was referred to the Office of Administrative Law Judges.

Respondent initially sought to have Complainant's case dismissed arguing on August 1, 2002, that: 1) Complainant's objection to the OSHA findings and request for hearing were untimely; 2) the objection was improper because it sought to raise additional issues not addressed by OSHA; and 3) in the alternative, any hearing should be limited to the issue of timeliness. Pursuant to my Order Dated July 30, 2002, Complainant filed a detailed complain t on August 8, 2002, alleging for the first

[1]Complainant sought to redress his grievances against Respondent with the OSHA offices in Eau Claire, Wisconsin, Atlanta, Georgia, and Seattle, Washington, but it is only the determination by the Eau Claire, Wisconsin OSHA office that form the basis of this proceeding.

time that a major airline had refused to hire him on July 8, 2002, because of Respondent's alleged blacklisting. Following an August 14, 2002 conference call with the Court, Respondent sought dismissal of the complaint making the additional arguments that Respondent should be entitled to $1,000.00 in attorney's fees for an unfounded complaint and that all discovery should be stayed pending the Courts ruling on the Motion to Dismiss. On August 22, 2002, Respondent objected to Complainant's allegations of blacklisting in July 2002, because those allegations had not been addressed by OSHA in the first instance.

On September 17, 2002, I issued an Order to Show Cause Why Complaint Should Not Be Dismissed. Complainant had arguably established that he engaged in protected activity, that Respondent knew of the protected activity, and that Complainant had suffered an unfavorable personnel action. Before addressing the issue of timeliness, I was concerned that even if Complainant's complaint was timely filed, and even if I had jurisdiction over an allegation of blacklisting that occurred in July 2002, could Complainant satisfy the remaining element of a *prima facie* case of discrimination, namely that Respondent had acted with a retaliatory motive in providing other air carriers with personnel information. If so, then I instructed Complainant to demonstrate that he filed a complaint with OSHA within ninety days of the allegedly adverse action.

II. STANDARD OF REVIEW

The rules of practice and procedure before the Office of Administrative Law judges are provided in 29 C.F.R. § 18.1 *et seq*. When the administrative rules do not specifically provide for a situation, the administrative courts are directed to follow the Federal Rules of Civil Procedure used by the United States District Courts. 29 C.F.R. § 18.1 (2001). The regulations do not specifically address the procedures applicable to motions to dismiss, thus, the standard of review is provided under Fed.R.Civ.P. 12(b) (2002), and the implementing case law.

In ruling on a motion to dismiss, the court must accept as true all well pleaded allegations, and must view the facts and inferences to be drawn from the pleadings in a light most favorable to the non-moving party. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L.Ed.2d 90 (1974); *Janney Montgomery Scott, Inc., v. Shepard Niles, Inc.*, 11 F.3d 399, 406 (3rd Cir. 1993). At a minimum, a complaint must provide a short plain statement of the claim that will give the opposing party fair notice of the claim and the grounds upon which it rests. *Conley v. Gibson*, 355 U.S. 41, 47, 78 S. Ct. 99, 2 L.Ed. 2d 80 (1957).

III. FACTUAL BACKGROUND

On January 4, 1999, Respondent hired Complainant to fly its DC-9 aircrafts based out its hub at Minneapolis St. Paul Airport. Complainant was a "probationary pilot," and around May 21, 1999, Respondent placed Complainant on twenty-four hour reserve duty when he was not flying denying him eight hours of rest in a twenty-four hour period and twenty-four hours of rest in a seven day period. After flying for nine days straight, Respondent gave Complainant notice at 1:00 a.m., on May 21, 1999, that he was scheduled to be the First Officer aboard a DC-9 flight at 9:00 a.m. that

morning. Complainant declined to take the scheduled flight due to fatigue, and when he called Respondent back at 10:00 a.m., Respondent informed him that he had another flight scheduled to leave in one hour. Because Complainant was still a "probationary employee," he felt obligated to take the assignment. Upon his return to Minneapolis, Captain Will Tannehill approached Claimant stating that he was "there to save [Complainant's] job."

As a result of his refusal to fly due to fatigue, Respondent summoned Complainant to a meeting on May 25, 2001, during which Chief Pilot Tom Eckhard told him to resign his position, or else Chief Eckhard would ensure that Complainant would not get another job in the airline industry again. Complainant was involuntarily terminated on May 25, 2001.

Subsequently, Complainant applied at numerous airlines. On July 11, 2000, he spoke with Plato Ryan, hiring coordinator for Delta Airlines, who initially indicated that Claimant was a good candidate. Later that year, however, Mr. Ryan informed Complainant that he would not consider Complainant for hire or an employment interview because of the circumstances surrounding his dismissal by Respondent.[2] Complainant also interviewed at Airtran, beginning on September 7, 1999, and Complainant received a recommendation that he be hired based on his flight simulation tests, and was even unofficially "welcomed" into Airtran. Later a Human Resources employee informed Complainant that there was a problem and he could not be hired. On May 21, 2001, Complainant attempted a second time to obtain employment at Airtran but was not hired despite the fact that his qualifications exceeded Airtran's new hires. Complainant also attempted in the summer of 2001 to gain employment with ASA, a company where he had ten years of prior service, but was told that he would not be considered for rehire. Complainant attempted to obtain a job at Airtran a third time in late December 2001, but Airtran executive Klaus Groesh overrode the recommendation that the company should offer Complainant a job. In February 2002, Airtran executive A.E. Sonny Smithwick met with Mr. Groesh and learned that Complainant was not hired because of the circumstances surrounding Respondent's termination of Complainant. Finally, on July 18, 2002, Complainant submitted another application to Airtran and Joe Leonard, the president of Airtran's Atlanta facility told Complainant that he was an ideal candidate for employment. Claimant, however, has not been hired.

IV. DISCUSSION

A. Timeliness of Complainant's Objection to OSHA Determination

"Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the [Secretary of Labor's] findings or preliminary order, or both, and request a hearing on the record." 49 U.S.C. § 42121(b)(2)(A) (2002). *See also* 29 C.F.R. § 1979.106(a) (2002) (stating that the objection and request for a hearing must be in writing within thirty days of receipt of the Secretary's findings and preliminary order. The date of the postmark, facsimile transmittal, or e-mail

[2] Pursuant to the Pilot Records Improvement Act, 49 U.S.C. § 44936 (2002),

communication is considered the date of filing.).

Here, OSHA made an adverse determination against Complainant on May 31, 2002. Complainant submitted a handwritten objection with this office on July 15, 2002. The postmark on OSHA's filing to the Office of Administrative Law Judges bears June 5, 2002 as the mailing date. I note that Complainant is routinely tardy in signing for his certified mail from this office in comparison with the other parties. Respondent has not provided the Court with concrete evidence that Complainant had receipt of OSHA's determination for more than thirty days before filing an objection with this Office, and because I must construe all inferences in favor of the Complainant in ruling on a Motion to Dismiss, I credit Complainant's statement that he did not receive the adverse OSHA determination more than thirty days before he filed his objection.

B. Establishing a *Prima Facie* Case

By regulation, a complainant under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, supplemented appropriately by interviews of the complainant, "must allege the existence of facts and evidence to make a *prima facie* showing as follows:

> (i) The employee engaged in protected activity or conduct;
> (ii) The named person knew, actually or constructively, that the employee engaged in the protected activity;
> (iii) The employee suffered an unfavorable personnel action; and
> (iv) The circumstances were sufficient to raise the inference that the protected activity was likely a contributing factor in the unfavorable action.

29 C.F.R. § 1979.104(b)(1) (2002). *See also See American Nuclear Resources, Inc. v. U.S. Department of Labor*, 134 F.3d 1292, 1295 (6th Cir. 1998) (Energy Reorganization Act); *Kahn v. U.S. Secretary of Labor*, 64 F.3d 271, 277 (7th Cir. 1995) (same); *Mackowiak v. University Nuclear Systems, Inc.*, 735 F.2d 1159, 1162 (9th Cir. 1984) (same).

B(1) Protected Activity

Whistleblowing protection acts protect concerns that "touch on" the subjects regulated by the pertinent statute. *Nathaniel v. Westinghouse Hanford, Co.*, 91 SWD 2 (Sec'y Feb 1, 1995); *Dodd v. Polysar Latex*, 88 SWD 4 (Sec'y Sept. 22, 1994). Protected activity under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century occurs when:

> [T]he employee (or person acting pursuant to a request of the employee) - -
> (1) provided, caused to be provided, or is about to provide . . . or cause to be provided . . . information relating to any violation or alleged violation of any order, regulation or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the

United States.

49 U.S.C. § 42121(a)(1) (2002).

Under 14 C.F.R. Part 121 (2002), the Federal Aviation Administration provided for mandatory rest periods for air pilots. Pilot fatigue is a central concern to air safety. *See* Goode, Jeffery H., *Risk Analysis for Flight, Duty and Rest Requirements*, SAFETY RISK ASSESSMENT NEWS, Rept No. 01-06, Nov./Dec. 2001 (detailing pilot fatigue incidences). Complainant alleged that he refused to fly a DC-9 aircraft because he was fatigued, - he had flown for nine days straight and was on twenty-four hour call - which deprived him of mandatory rest periods. Construing all inferences in favor of Complainant, I find that Complainant established a *prima facie* showing that he engaged in a protected activity when he refused to fly because he had a good faith belief that such a flight violated federal flight safety regulations.

B(2) Respondent's Knowledge

The employer must have actual or constructive knowledge of a complainant's protected activities before the employer can be held liable for violating a whistleblower protection law. *Morris v. American Inspection Co.*, 92-ERA-5 (Sec'y Dec. 15, 1992); *Adjiri v. Emory Univ.*, 97-ERA-36 (ARB July 14, 1998). Knowledge of protected activity cannot be imputed to higher management without proof. *Mosley v. Carolina Power & Light Co.*, 1994-ERA-23 (ARB August 23, 1996). Here, Complainant met his *prima facie* burden showing that Respondent had knowledge of his protected activity because Complainant's actions were addressed by both Captain Will Tannehill and Chief Pilot Tom Eckhard.

B(3) Adverse Action

An employer violates employee protection statute if it discharges an employee or otherwise discriminates "against an employee with respect to compensation, terms, conditions, or privileges of employment." 49 U.S.C. § 42121(a) (2002). Under the Code of Federal Regulations governing the implementation of employee protections statutes, adverse action occurs when an employer "intimidates, threatens, restrains, coerces, blacklists, discharges, or in any manner discriminates against any employee. . . ." 29 C.F.R. § 24.2(b) (2002). Blacklisting, one of Complainant's alleged adverse actions, occurs when one with knowledge of protected activity informs another that the employee is disfavored thus marking the employee for avoidance. *Leeville v. New York Air National Guard*, 94 TSC 3-4 (Sec'y Dec. 11, 1995). In this case, Complainant alleged that Respondent discharged him for engaging in protected activity on May 25, 1999, and communicated unfavorable reports to prospective employers concerning the circumstances of his termination prohibiting him from obtaining "reputable employment from any major airline" despite his apparent qualifications. Claimant asserts that the information Respondent provided was not disclosed pursuant to the mandatory disclosures under the Pilot Records Improvement Act. Accordingly, based on Complainant's allegations, he established a *prima facie* case of adverse action because Respondent discharged him on May 25, 1999, and allegedly engaged in blacklisting which prohibited him from

obtaining employment with other major air carriers.

B(4) Adverse Action Motivated By Protected Activity

An employee can prevail in showing that adverse employment action was motivated by protected activity where there is direct evidence of discrimination. *TWA v. Thurston*, 469 U.S. 111, 121 (1985); *Walker v. Prudential Property & Casualty Insurance Co.*, 286 F.3d 1270, 1274 (11 Cir. 2002). Direct evidence of discrimination is evidence that "will prove the particular fact in question without reliance on inference or presumption." *Pitasi v. Gartner Group, Inc.*, 184 F.3d 709, 714 (7th Cir. 1999). Such "evidence must not only speak directly to the issue of discriminatory intent, it must also relate to the specific employment decision in question." *Id*.

In the absence of direct evidence of discrimination, a complainant makes out a *prima facie* case of retaliation by showing he or she is a member of a protected class, that he or she engaged in protected activity, that the respondent took adverse action, and that the respondent had knowledge of his or her protected activity. The threshold for establishing a *prima facie* case is low and the amount of evidence needed to "infinitely less than what a directed verdict demands." *Saint Mary's Honor Center v. Hicks*, 509 U.S. 502, 515, 113 S. Ct. 2742, 2751, 125 L. Ed. 2d 407 (1993).

In this case the undeveloped record is devoid of direct evidence of discrimination. Complainant alleged, however, that during a conversation with Chief Pilot Tom Eckhard, Mr. Eckhard vowed that Complainant would not get another job in the airline industry again because of his refusal to fly. Subsequently, Complainant alleged that he was told by Delta and Airtran that he was a highly qualified job candidate, but after discussions with Respondent neither airline was willing to offer Complainant a job. Accordingly, I find that Complainant produced sufficient evidence of retaliatory animus on behalf of respondents to present a *prima facie* case sufficient to overcome a motion to dismiss.

C. Timeliness

A whistleblowing complaint, alleging discrimination under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, must file a complainant within ninety days of the alleged adverse action. 49 U.S.C. § 42121(b)(1) (2002); 29 C.F.R. § 1979.103(d) (2002). The ninety day time period begins to toll "when the discriminatory decision has been both made and communicated to the complainant." 29 C.F.R. § 1979.103(d) (2002). "Strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *Mohasco Corp. v. Silver*, 447 U.S. 807, 826, 100 S. Ct. 2486, 65 L. Ed.2d 532 (1980); *Prybys v. Seminole Tribe of Florida*, 95 CAA 15 (ARB Nov. 27, 1996) (stating that the brief filing period in environmental whistleblowing was the mandate of Congress and the limitations cannot be disregarded because it bars what might otherwise be a meritorious case). Discrete acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. - -, 122 S. Ct. 2061, 2072-73 (2002); *United Air Lines Inc., v. Evans*, 431 U.S. 553, 558 (1977) (finding that acts falling outside

the prescriptive period may constitute relevant background evidence where current conduct is at issue).

Here, Complainant initiated the OSHA complaint that is immediately before this Office on March 28, 2002. By statute any adverse act that occurred within ninety days of this filing was timely before OSHA. Complainant specifically alleged an adverse action in late December 2001, when he learned that Airtran had refused to hire him, an act that Complainant attributes to Respondent's blacklisting. Complainant asserts that this act of blacklisting occurred within ninety days of his OSHA compliant and thus made a *prima* facie showing that his March 28, 2002 complainant alleging was timely filed.

C(1) November 17, 1999, Minnesota State Court Complaint and August 8, 2002 OALJ Complaint

Prescriptive periods are subject to equitable doctrines such as estoppel, tolling and waiver. *Morgan*, 122 S. Ct. at 2076. Equitable estoppel focuses on whether the employer misled the complainant and thereby caused a delay in filing a complaint and equitable tolling focuses on whether a complainant was excusably ignorant of his or her rights. *Prybys v. Seminole Tribe of Florida*, 95 CAA 15 (ARB Nov. 27, 1996). Equitable tolling is also available when a complainant files a timely complaint raising issues sufficient to state a cause of action under whistleblowing laws, but files the complainant in the wrong forum. *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96, 111 S. Ct. 453, 112 L.Ed.2d 435 (1990) (stating that equitable tolling is available when a party filed a defective pleading during the statutory period); *Weathers v. Bean Dredging Corp.*, 26 F.3d 72, 72-73 (8th Cir. 1992) (declining to apply the doctrine of equitable tolling when the party had slept on their rights and had not actively pursued the litigation in the earlier forums); *Covy v. Arkansas River Co.*, 865 F.2d 660, 662 (5th Cir. 1989) (same); *Biddel v. Department of the Army*, 93 WPC 9 (ALJ July 20, 1993).

Complainant filed his first complainant on November 17, 1999, in the District Court for the Fourth Judicial District of Minnesota, alleging the precise claim that Complainant seeks to redress in the federal forum. After referring the case for arbitration, the arbitrator dismissed the case on March 15, 2002, reasoning that Complainant's state law claims were preempted by federal law. On March 28, 2002, Complainant filed his complaint with OSHA. Construing all inferences in favor of Complainant, there is sufficient evidence for a *prima facie* showing that any adverse action that occurred within ninety days of November 17, 1999, is timely.

Similarly, Complainant filed another complaint before this Office on August 8, 2002, alleging for the first time that he had made an application to an airline on July 18, 2002, and that he had not been selected for a position despite his qualifications. Like Complainant's November 17, 1999 State court filing, this appears to be a complaint filed with the ninety day period of limitations, but filed in the wrong forum. *See* 49 U.S.C. § 42121(b)(1) (2002) (stating that "A person who believes that he or she has been discharged or otherwise discriminated against by any person . . . may . . . file . . . a complainant with the Secretary of Labor). Complainant should file this allegation with the Secretary

of Labor and allow OSHA the opportunity to conduct an investigation in the first instance before bringing a claim before this office.[3]

C(2) Continuing Violation

Outside of hostile work environment claims, the Supreme Court ended the continuing violation theory developed by the lower courts to boot strap adverse employment actions into the prescriptive period. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. - -, 122 S. Ct. 2061, 2072-73 (2002). In particular, the Ninth Circuit had developed a theory whereby an employer commits a "serial violation" if the alleged employment actions occurring before the statutory time limit are sufficiently related to those occurring within the statutory time limit and the acts are more than isolated, sporadic and discrete. *National Railroad Passenger Corp. v. Morgan*, 232 F.3d 1008, 1015 (9th Cir. 2000). The Court determined that the "serial violations" theory contradicted the plain language of the statute which provided that a complaint "shall be filed" within the statutory prescriptive period. *Morgan*, 122 S. Ct. at 2070. A discrete retaliatory act "occurs" on the day it happens and the complaint must be filed within the statutory time frame based off the happening of that event. *Id*. at 2070-71. Thus, discrete retaliatory acts are not actionable if time barred even when they are related to acts that fall within the prescriptive period. *Id*. at 2072. On the other hand, the determination of when an adverse employment action "occurs" is not limited to a particular day, and a single adverse act may "occur" over a long period of time. *Id*. at 2072-73.

I find that Complainant has failed to establish a showing sufficient to overcome a motion to dismiss with regards to including all allegedly adverse actions undertaken by Respondents since May 25, 1999, under a continuing violation theory. Complainant was terminated by Respondent on May 25, 1999, and has not presented any evidence that he was subject to a pervasive and regular hostile work environment. Rather, Complainant's pleadings establish a series of discrete acts. Complainant applied for jobs on separate, identifiable occasions. Each occasion where Respondent made an alleged blacklisting remark, and arguably, on each occasion that a prospective employer remembered a prior blacklisting remark made by Respondent in refusing to hire Complainant, constituted a discrete adverse act of blacklisting. This is not to say that the "occurrence" of the allegedly blacklisting act could not begin on one date and end at a much later time. Such an "occurrence" is still a discrete act. In light of the Supreme Court's holding in *Morgan*, even if the events Complaint details are

[3] Complainant asserts his right to amend his complaint to include new evidence of retaliatory adverse action. Complainant's case was referred to this Office based on his March 28, 2002 OHSA complaint. Based on the record in this Office, Complainant has not given OSHA the opportunity to investigate the July 2002 blacklisting allegations under the two-tiered scheme Congress provided for handling whistleblower claims. I understand that the substance of the July 2002 incident is based on the same core of operative facts that form the basis of Complainant's March 28, 2002 complaint, however, I will not arbitrarily usurp the system established by Congress and determine the legitimacy of this allegation in the first instance. A better procedure is to make the initial complaint to OSHA and then move to consolidate the complaint with litigation pending before the OALJ.

interrelated and connected, there is no actionable "serial violation." Furthermore, I do not find that Respondent's act of discharging Complainant on May 25, 1999, constitutes the same act or "occurrence" of blacklisting. Accordingly, Respondent's Motion to Dismiss is GRANTED with respect to Complainant's May 25, 1999 discharge, which is a discrete act that "occurred" on the same day, and thus, it does not fall within the ninety day period of limitation of Complainant's first complaint on November 17, 1999.

D. $1,000.00 Attorney's Fee Penalty

Under 29 C.F.R. § 1979.105(b) (2002), the Assistant Secretary may impose a $1,000.00 attorney's fee penalty for bringing an action that was frivolous or in bad faith. Based on the record before me, I do not find such a penalty is warranted in this case.

E. Remand

Based on the circumstances of this case, the position of both parties that a remand is appropriate before deciding the case on the merits, and the two-tiered structure promulgated by Congress for either conducting a *de novo* investigation or a *de novo* factual determination, I find it appropriate to remand this case back to OSHA for further investigation. *See Garcia v. Ebasco Services, Inc.*, 87-ERA-26 (Sec'y July 11, 1989) (finding a remand to the Wage and Hour Division appropriate when the complainant responded to the ALJ's order to show cause based on a timeliness issue, and the complainant had responded putting some facts in dispute). *C.f. Egenrieder v. Metropolitan Edison Co.*, 85-ERA-23 (Sec'y Apr. 20, 1987) (finding a remand was not specifically contemplated by the rules for the purpose of conducting a further investigation and the parties were entitled to a *de novo* review before the ALJ once a hearing was requested).

In this case, OSHA apparently has not investigated Complainant's reports of blacklisting finding instead that Complainant's allegations were time barred. On remand, OSHA should specifically investigate allegations of adverse actions within ninety days of November 17, 1999, March 28, 2002, and August 8, 2002. Based on assertions of Complainant's counsel, the Atlanta office of OSHA is currently investigating his allegations of blacklisting. Remand to OSHA is appropriate because: 1) Complainant initiated multiple OSHA investigations; 2) this case was only referred to this Office from the Eau Claire, Wisconsin OSHA office while the same investigation is ongoing elsewhere; 3) the referral to this office did not purport to investigate allegations of blacklisting; 4) Congress specifically intended for the Secretary of Labor to investigate whistleblowing complaints in the first instance before granting jurisdiction to the Office of Administrative Law Judges; and 5) because all parties agree that the case should be remanded instead of having a *de novo* determination on the merits before this Court.

V. ORDER

Based on the foregoing, I find it appropriate to enter the following Order:

1. Respondent's Motion to Dismiss is GRANTED insofar as Complainant failed to establish that his May 25, 1999, discharge occurred within ninety days of filing a complaint.

2. This case is remanded back to OSHA to conduct an investigation into alleged retaliatory acts of blacklisting that occurred within ninety days of November 17, 1999, March 28, 2002, and August 8, 2002.

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CLEMENT J. KENNINGTON
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110(2002), unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Ave., NW, Washington, DC 20210. Any party desiring to seek review, including judicial review, of a decision of the administrative law judge must file a written petition for review with the Board, which has been delegated the authority to act for the Secretary and issue final decisions under 29 C.F.R. Part 1979. To be effective, a petition must be received by the Board within 15 days of the date of the decision of the administrative law judge. The petition must be served on all parties and on the Chief Administrative Law Judge. If a timely petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board. The Board will specify the terms under which any briefs are to be filed. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U. S. Department of Labor, Washington, DC 20210. See 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).